

AMENDED IN ASSEMBLY JANUARY 3, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 163

Introduced by Assembly Member Wayne

January 15, 1999

An act to ~~amend Section 1157 of the Penal Code, relating to criminal procedure;~~ *add Section 11375.5 to the Health and Safety Code, relating to controlled substances.*

LEGISLATIVE COUNSEL'S DIGEST

AB 163, as amended, Wayne. ~~Degree of crimes~~
Clonazepam: unauthorized possession.

Existing law makes it a misdemeanor or a felony to possess for sale, or sell, the controlled substance clonazepam.

This bill would provide, in addition, that it is a misdemeanor to possess clonazepam, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law provides that whenever a defendant is convicted of a crime, or an attempt to commit a crime, which is distinguished into degrees, and the jury, or the court if a jury~~

~~trial is waived, fails to determine the degree of the crime, or attempted crime, of which the defendant is guilty, the degree of the crime, or attempted crime, of which the defendant is guilty shall be deemed to be of the lesser degree.~~

~~This bill would provide that the above provision is only applicable whenever the finder of fact has a choice as to the degree. The bill additionally would provide that if the crime, or attempt to commit a crime, for which the defendant was convicted is a specified degree as a matter of law, upon the failure of the jury to determine the degree of the crime, the court shall fix the degree pursuant to a prescribed procedure.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 1157 of the Penal Code is~~
 2 ~~SECTION 1. Section 11375.5 is added to the Health~~
 3 ~~and Safety Code, to read:~~
 4 ~~11375.5. Except as otherwise provided in Section~~
 5 ~~11375, every person who possesses clonazepam, unless~~
 6 ~~upon the prescription of a physician, dentist, podiatrist, or~~
 7 ~~veterinarian licensed to practice in this state, shall be~~
 8 ~~punished by imprisonment in a county jail for a period of~~
 9 ~~not more than one year.~~
 10 ~~SEC. 2. No reimbursement is required by this act~~
 11 ~~pursuant to Section 6 of Article XIII B of the California~~
 12 ~~Constitution because the only costs that may be incurred~~
 13 ~~by a local agency or school district will be incurred~~
 14 ~~because this act creates a new crime or infraction,~~
 15 ~~eliminates a crime or infraction, or changes the penalty~~
 16 ~~for a crime or infraction, within the meaning of Section~~
 17 ~~17556 of the Government Code, or changes the definition~~
 18 ~~of a crime within the meaning of Section 6 of Article~~
 19 ~~XIII B of the California Constitution.~~
 20 ~~amended to read:~~
 21 ~~1157. (a) Whenever a defendant is convicted of a~~
 22 ~~crime, or an attempt to commit a crime, which is~~
 23 ~~distinguished into degrees, the jury, or the court if a jury~~
 24 ~~trial is waived, shall find the degree of the crime, or~~

1 attempted crime, of which the defendant is guilty. Upon
2 the failure of the jury or the court to so determine, the
3 degree of the crime, or attempted crime, of which the
4 defendant is guilty, shall be deemed to be of the lesser
5 degree. This subdivision shall only apply to situations
6 where the finder of fact has a choice as to degree.

7 (b) If the crime, or attempt to commit a crime, for
8 which the defendant was convicted is a specified degree
9 as a matter of law, upon the failure of the jury to
10 determine the degree of the crime, the court shall fix the
11 degree as specified. In determining whether the degree
12 of the offense is a specified degree as a matter of law, the
13 court may refer to the descriptive substantive definitions
14 contained in the charging document, any factual finding
15 contained in the verdict form, the fact that the jury was
16 only instructed on a specified degree and not any lesser
17 degree, or the fact that the jury was only instructed on
18 one theory of the case.

